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In The

Supreme Court of the United States

November Term, 1979

79-5736

Emory X. Johnson,

Petitioner,

vs.

GARY J. HILTON
~~United States of America,~~

Respondent.

Petition for a Writ of Certiorari
The United States Court of Appeals
For the Third Circuit.

Emory X. Johnson
Pro Se
Box 7450, #52180
Trenton, N.J. 08628

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Petition For A Writ of Certiorari To
The United States Court of Appeals for The
Third Circuit

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and unpublished opinion of the United States Court of Appeals for the Third Circuit, entered in this proceeding on October 3 ~~September 28~~, 1979.

Opinion Below

The unpublished opinion of the Court of Appeals appears in the appendix at 1a, infra. The endorsed denial of the District Court appears in the appendix at pa. 23, attached hereto.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on ~~September 28~~ Oct. 3, 1979, affirming the opinion of the United States District Court for the District of New Jersey, denying preliminary injunctive relief after admitting violations existed pursuant to Bounds v. Smith, 430 U.S. 817 (1977). This Court has Jurisdiction under 28 U.S.C. Sections 1252, 1253, 1254.

Questions Presented

I. Where the petitioner is deprived of access to the courts and court agrees, failure to granted reasonal injunctive relief is error and injurious to the life and liberty of the petitioner.

II. Where the respondents interfer and deprive petitioner of access to the courts, it is an error of a irreparable nature to permit those same respondents to apply remedies in good faith where no such good faith was demonstrated in several years of civil litigation by petitioner.

Statutary Provisions Involved

United States Constitution, First, and Fourteenth Amendments

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection protection of the laws.

28 U.S.C. § 1252 District appeals from decisions invalidating Acts of Congress

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congree unconstitutional in any civil action, suit or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court. As amended Oct. 31, 1951, c. 655 § 47, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e),(f), 72 Stat. 348; Mar. 18, 1959, Pub.L. 86-3, § 14(a) 73 Stat. 10.

28 U.S.C. § 1253 Direct appeals from decision of three-judge courts

Except as other wise provided by law, any person may appeal to the Supreme Court from an order granting or denying, after notice and hearing an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

28 U.S.C. § 1254 Court of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods;

(1) By writ of certiorari granted upon petition of any party to any civil or criminal case, before and after rendition of judgment or decree; (2) By appeal by a party relying on a state statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in contraversy.

STATEMENT OF THE CASE

The petitioner, who is a prisoner at the New Jersey State Prison pursuant to a criminal conviction in the New Jersey Superior Court, filed a civil complaint against prison officials for depriving him of meaningful access to the courts. The defendants transfered the petitioner to areas of the prison facilities with severely limited access to law books and legal reference materials and then advised that court that the matter was moot inasmuch as he was being punished for misconduct.

Motion for a prelininary injunction order was made by the petitioner and due to numerous others who were also complaining of the lack of access to the court, the District Court Judge decided to conduct a hearing to determine the veracity of the plaintiff's allegations. On September 12th., 1978, the District Court ruled against the plaintiffs, including the petitioner with other inmates whose civil complaint motion for a preliminary injunction had been consolidated therewith, and denied their motion for a preliminary injunction while agreeing that the defendants were, in fact, in violation of Constitutional Requirements to provide meaningful access to the courts for all prisoners, but refused to issue any relief despite the Court's affirmation of the allegations that the defendants' acts and policies are violative of constitutional protection and that the plaintiffs are therefore, exposed to irreparable injury.

The petitioner filed interlocutory appeal to the United States Court of Appeals for the Third Circuit who affirmed the judgment of the District Court without rendering and opinion therefore. It was for that reason that the petitioner seeks judicial review by means of writ of certiorari issued by this Court in the herewith matter.

The petitioner who is the plaintiff pro-se., in several criminal and civil actions presently being litigated has been transfered to the prison's segregation area where his access to reference materials are only available via the social worker, if the prisoners knows in advance the titles of case and rule laws required to proceed in criminal and/or civil litigations,

Presently the petitioner is housed at the Trenton Vroom Readjustment unit (V.R.U.) where although there is a marginally equipped law library, the plaintiff-petitioner and other prisoners have absolutely know access thereto and are without qualified attorneys, clerks and/or para-professional to instruct the petitioner as to the necessary volumes and how to conduct research and the social worker presently assigned to provide the petitioner with legal materials are not able to conduct research in the absence of the petitioner's restriction from the prison's law library and because of this the petitioner is unable to obtain the correct information from the social worker because if he does not know the reported cases because he does not have access to the Shepard Citations and the social worker does not have the legal knowledge to conducts such research for the petitioner and without such information and access to research materials, the criminal charges of which the petitioner is defending himself against makes it impossible for him to prepare an adequate defense and/or to prosecute civil complaints which he is so presently forced to proceed in pro-se, as an indigent.

Although the petitioner initially requested relief that would permit him access to the prison's law library, it was in no way a compelling remedy that required the court to release the petitioner from the segregation unit, but merely to provide adequate legal materials and reference books for the segregation area and have a qualified para-professional available to instruct him with respect to research techniques and proper use of the law library and preparations of writs and motions, Bounds v. Smith, 430 U.S. 817 (1977)

as well as to assist those who are illiterate and unable to represent themselves under general population condition, much less than being confined and isolated without personal assistance.

The defendants since the date of the filing of this motion for a preliminary injunction order, have obtained additional books for the main prison complex law library which was already adequate, while still refusing to provide a small law library for the sergeation areas, and for the approximately 100 (onehundred) prisoners presently at the Vroom Readjustment Unit (V.R.U.) confined approximately ten (10) miles from the main prison's law library and are still without access to adequate materials and reference to properly defend themselves and/or prosecute civil actions as the petitioner has attempted without reference to cite which resulted in his rejection of appeals to the Federal Courts because of his lack of knowledge and constant errors in the presentation of the grounds for relief and petitioner believes that his lack of knowledge and deprivation of access to proper law library facilities was the reason his petitions were rejected inasmuch as he has had his papers repeatedly returned to him for his failure to properly adhere to Court Rules and Procedure.

Petitioner's basic argument is that the Courts erred in denying a measure of relief which would be necessary to bring the defendants in immediate compliance with law, Bounds v. Smith, supra., and provide the petitioner with access to an adequate law library (or) provide him with an attorney to represent him in the criminal as well as the civil actions. The defendants have instituted minor changes at the Trenton Prison Complex to improve inmates' access to the courts, but on the same hand have further restricted the petitioner in what appears to indicate they may be attempting to punish the petitioner for this action therefore, other inmates are given additional access to the courts while the petitioner is adversly punished in

further restrictive actions, i.e., when the indigent petitioner's funds have expired, instead of petitioner's postage for legal mail being taken from the the prison's "Inmate Welfare Fund", pursuant to Bounds v. Smith, supra., the petitioner's prison account was and is garnished for the cost of the legal postage which prevents petitioner from corresponding with family and friends and prevents his purchase toilet necessities which are not issued by the prison, i.e., soap, toothpaste, etc., and forces the petitioner to make a choice between access to the courts, his personal hygiene and health.

Reason For Granting the Writ

This Court's need to make it's ruling in Bounds v. Smith, 430 US 817 (1977); and Younger v. Gilmore, 404 U. S. 15, 92 S.Ct. 250, 30 L.Ed. 2d 142 (1971), clear to the respondents and that no citizen should be deprived of access to the court for any reason where intervention of set mandate are followed.

The petitioner who is a prisoner at the New Jersey State prison is not exempt of constitutional protection, and where the court agrees that there is a substantial violation of constitutional mandate against the petitioner, there is no reason why this court should not intervene and re-establish the set law and protect the constitutional rights of all citizens and their right to redress.

The very idea of the petitioner having to contact the court for the court clerk's direction in matters of filing appeal, demonstrates that an adequate legal access program at the aforesaid prison facility and is deficient in meeting such needs and where such an important means of redress is missing the Granting of the petitioner request for Writ of Certiorari is necessary to prevent further irreparable injury as agreed by the Court as the result of the respondents action (see; Pa-4), Writ of Certiorari should be granted to the petitioner.

Conclusion

Because the Circuit Court has failed to intervene in the herewith matter and for the foregoing reasons the petitioner respectfully prays that the motion and petition of Writ of Certior ari be granted. Also, since there is conflict within the Circuit Court as to the proper standards and/or the right of prisoners to have adequate access to the courts, petitioner prays that Writ of Certiorari be granted and issue to review this matter.

Respectfully submitted,

EMORY X. JOHNSON, Pro Se Petitioner
P.O. Box 7450- #52180
Trenton, NJ. 08628

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 79-1093

RECEIVED
10-5-79

EMORY X. JOHNSON,
Appellant

v.

GARY J. HILTON, Superintendent
and LESLIE CRAWFORD, Officer

Appeal from the United States District Court
for the District of New Jersey
Civil No. 77-0059

Submitted Pro Se September 28, 1979

Before: ADAMS, HUNTER and HIGGINBOTHAM, Circuit Judge.

JUDGMENT ORDER

After considering the contentions raised by appellant, namely, that the defendants' claim to be in compliance with the constitutional mandate is erroneous and the plaintiff is presently deprived of limited access to the courts available prior to his motion for a preliminary injunction, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed. Each party shall bear their own costs.

BY THE COURT,

Circuit Judge

ATTEST:

Thomas F. Quinn, Clerk

DATED: October 3, 1979

AFFENDIX

12-4

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMORY X. JOHNSON :

vs. : CIVIL NO. 77-59

GARY J. HILTON, Superintendent and LESLIE CRAWFORD, Officer :

- - - - - - - - - - - - - - - - - - - : Consolidated for hearing only with

JAMES NEWMAN, SUNDIATA-ACOLI/ CLARK SQUIRE, JAMES WILLIAMS, CLEO JESTER, ARTHUR WASHINGTON :

vs. : CIVIL NO. 77-1478

ROBERT E. MULCAHY III, Commissioner of the New Jersey Department of Corrections; :
WILLIAM H. FAUVER, Deputy Commissioner of the New Jersey Department of Corrections; :
RICHARD SEIDEL, Director of the New Jersey Adult Division of Corrections; :
GARY J. HILTON, Superintendent of the New Jersey State Prison, Trenton, New Jersey; :
E. CALVIN NEUBERT, Assistant Superintendent of the New Jersey State Prison, Trenton, Trenton, New Jersey; :
DONALD F. TUCKER, Assistant Superintendent of the New Jersey State Prison, Trenton, Trenton, New Jersey; :
G. DE POALIS, Chief Deputy Keeper of the New Jersey State Prison, Trenton, Trenton, New Jersey; :
Lt. JULIAN, Lieutenant of the New Jersey State Prison, Trenton, Trenton, New Jersey; :
BARRY COHEN, Sergeant of the New Jersey State Prison, Trenton, Trenton, New Jersey. :

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MEMORANDUM

FILED
SEP 12 1978
at 8:30 o'clock A.M.
ANGELO W. LOCASCIO
Clerk

FISHER, District Judge

One of the many problems that has arisen since the United States Supreme Court first stated that prisoners have a right to access to the courts is defining the scope of that right.[1] Over the past 37 years that right has been expanded, defined and redefined. The Supreme Court's decision last year in Bounds v. Smith, 430 U.S. 817 (1977), is the culmination of many Supreme Court and lower court cases on the subject. The Supreme Court's decision in Bounds, supra, while not a definitive statement as to what is mandated in every circumstance, does set down guidelines for lower courts.

The right of access to legal materials and notary services is a natural derivative of the right of access to the courts. It is an allegation of the denial of these rights that is the crux of the matter now before this Court.

On motion of the defendants the case of Johnson v. Hilton,[2] Civil 77-59 was consolidated with Newman v. Mulcahy,[3] Civil 77-1478 for the purpose of a hearing. The Court on its own initiative has consolidated the hearing for a preliminary injunction in Johnson v. Hilton with the hearing on the merits pursuant to F.R.Civ.P. 65(a)(2).[4]

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1. Ex Parte Hull, 312 U.S. 546, 549 (1941).

2. Johnson v. Hilton originated as an action challenging the institution by prison officials of a new pass system for the general population. By his complaint Johnson alleged that the new pass system restricted his access to the law library and thus the courts. Subsequently Johnson was removed from the general population and placed in administrative segregation. In response to this transfer Johnson amended his complaint so as to reflect the transfer while still maintaining that he is denied access to the courts.

3. Newman v. Mulcahy was initiated by the plaintiffs upon the belief that their rights under the prison regulations and the Fourth, Fifth and Eighth Amendments to the United States Constitution were being violated. The twelve count complaint can be reduced to three basic claims: (1) the transfer from the general prison population to the management control unit (MCU) violated their rights as the basis for those transfers were specious; (2) that the transfers were illegal in that there were no hearings or the hearings were improper; and (3) that they are living in extremely unclean conditions and are denied the right to receive employment compensation. The first two claims are very similar in nature to the facts in Hodges v. Klein, 412 F.Supp. 896, 421 F.Supp. 1224, (D.N.J. 1976), aff'd. per curiam 562 F.2d 276, (3d Cir. 1977). For that matter some of the named plaintiffs in Hodges, supra, a class action, are the same as the plaintiffs in Newman.

This case was consolidated with Johnson because the plaintiffs, by motion, have requested that this Court issue an injunction requiring the prison officials to allow them access to the courts and the concomitant relief of access to the law library.

4. I had contemplated certifying this as a class action but because of the adequate representation requirement, F.R.Civ.P. 23(a)(4), and the fact that relief to the plaintiffs would effectively be relief to all those similarly situated, such action was not taken.

A review of the files in both these cases indicated that it was imperative that testimony be received, not only from the plaintiffs, but from selected prisoners and prison officials. Confronted with the demands of security and countless other problems that come to mind when contemplating such a mass movement of prisoners and the disruption to the prison resulting from the necessity to call various prison officials and officers, I determined that it would be necessary to hold at least a portion of the hearings at the prison. For the convenience of the parties and in the interest of justice, the location of the Court was temporarily changed to the prison auditorium. See 28 U.S.C. §1404(a). All the prisoner witnesses were heard during the first three days of hearings. The Court then returned to the courthouse for the remaining two days of hearings.

While it is highly unusual to have a federal judge hold court in a prison, it served a two fold purpose. First, as pointed out above, it was the most convenient, expeditious and safe manner to receive testimony from the prisoners, and second, and especially important in this case, it was a method of insuring completely unfettered access to the Court. As an aside, being at the prison allowed me to visit the library facilities, review the layout and examine the books available to the prisoners.

In both cases prisoners requested that one prisoner be present to aid each of the plaintiffs at the hearing. These "advisors" were allowed to be present at the prison and the courthouse.

I find the following relevant and credible facts pursuant to F.R.Civ.P. 52.

Trenton State Prison (TSP) is the only fully maximum security prison in the State of New Jersey. It is also the oldest, having been authorized by an Act of the Legislature in 1797.

Of the present buildings wing 4 is the oldest, having been constructed in 1835 and opened in 1836. Other building dates are as follows:

Front House	1836
Dining Hall	1847
Wing 2	1850
Hospital	1854
Wings 3 and 5	1867
Wing 1	1875
Wing 6	1885
Industrial Building	1900
Wings 7 and 8	1907
Power House	1922
New School Building	1972

The prisoners assigned to TSP are generally those serving a maximum sentence in excess of twenty years. Difficult management cases and serious disciplinary cases are also sent to TSP from other institutions in the prison system. Further, inmates who either by organizational positions or by force of their own personalities are able to exert a negative controlling influence over other inmates, which is adverse to the orderly and secure operation of other institutions, are sent to TSP.

The prison contains two lockup or close custody units: Administrative Segregation for those prisoners who create serious disciplinary problems, and Management Control Unit[5] (MCU) for prisoners who pose serious management problems because of violence, threat of safety to others, damage or destruction of property, or interruption of the operations of the prison.

At the time of the hearings, the prisoner population at TSP was 951 men.

Administrative Segregation and MCU prisoners are not allowed direct access to the law library. The prison has instituted a pass system whereby those prisoners in close custody in need of law books or legal assistance must submit a request slip with two copies to the wing officer. Those prisoners incapable of filling out their own slips may request that the wing officer fill them out for them.

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5. For a history of the establishment of the MCU, see my opinions in Hodges v. Klein, 412 F.Supp. 896, 421 F.Supp. 1224 (D.N.J. 1976) aff'd. per curiam 562 F.2d 276 (3d Cir. 1977).

The wing officer submits the requests to the traffic control officer who in turn gives them to the paralegals[6] for distribution to the person or organization (Law Library, Inmate Legal Association, or American Civil Liberties Union) to whom the request is made.

Prisoners may request that they be visited by a specific person from the approved list or a specific organization. Service is supposed to be rendered to those in close custody within seven days of the request and within twenty-four hours for those in prehearing detention.

The choice of which requests will be honored and in what order is left to the sole discretion of the paralegal to whom the request is made.

Once the paralegal makes a decision as to whom he shall visit he proceeds to traffic control to exchange his identity card for the badge for the area in which the prisoner is housed. There is only one badge for each area, so only one paralegal may be in there at any one time. If the badge is not available, he may wait for it. Alternatively, if available, he may get a badge from another area.

If the badge is available he must leave one copy of the request slip with traffic control and then proceed to the unit. Before entering the unit he is subject to a strip search, if the guard deems it necessary, but at the least, a search of his person and anything he is bringing into the unit. Where it is determined that the paralegal is bringing in contraband, it is confiscated and the paralegal is not allowed in the unit.

When the paralegal is allowed in he visits the requesting prisoner to find out his needs and possibly discuss the case and then must leave the unit. Until very recently the prisoner had to fill out another request slip for the paralegal to return with whatever material it was determined at the last visit the prisoner would need. Under a newly instituted system, the paralegal may now make one return visit. This system is strictl experimental and may be revoked at any time.

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6. My use of the term paralegal here and throughout the opinion, unless otherwise stated, refers not only to those (cont'd.)

From January of 1978 until July of 1978 there has been a total of 1553 visits from all three groups to the close custody area.

While in the unit the paralegal may only visit a prisoner from whom he has received a request slip.

During the alloted times[7] when paralegals may make their visits the visit may be, and has been, on several occasions, cut short because of movements in the unit, i.e. showers, yard, etc.

Not all request slips submitted are processed. Some prisoners, out of a desire to keep a record of requests, have kept one of the copies of the request form. This is not allowed by the rules as each copy has a specific purpose. The prisoners have been informed of this but the practice still persists.

One of the factors that is considered in determining who to put down on the list as being allowed a visit, is the number of past visits and the number of request submitted. Some prisoners have submitted as many as ten requests in one day. Some of the prisoners state that there is a great delay between the time they submit slips and when they receive a visit.

The amount and type of material that a paralegal may bring into the close custody area is limited. They may bring in a "reasonable" amount of supplies, i.e. pens, papers, pencils, etc., copies of cases or softbound case reports and other legal material. Generally no hardbound copies may be brought in, rather copies are to be made of the desired cases and the copies brought in. Besides these limitations, the copy machine is frequently in need of repair for long periods of time and books are stolen from the library thereby posing further limits on the type and amount of material that may be brought in.

The literacy level of the prison population is extremely low and those housed in close custody are no exception. Some of the prisoners do not want paralegal assistance because they feel they are competent to handle their own cases. In those cases

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6. (Cont'd.) designated by classification as a paralegal, but also those designated para professional, American Civil Liberties Union Clerk, Inmate Legal Association Clerk and law library clerk.

7. Inmate paralegals may visit close custody areas during the following times: (Cont'd.)

what they desire is to be able to get the books without a visit by the paralegal. The majority, however, do need the assistance of paralegals and the visits they get are insufficient to meet their needs.

Some prisoners could not get sufficient access to either books or paralegals to do the research they felt needed on their criminal appeals. All of those prisoners were, however, represented by an attorney, generally the public defender, all the way to the New Jersey Supreme Court.

The regulations specifically state that no money is to be received in exchange for services rendered. The paralegals have taken this regulation literally and have not accepted offers of money. They have, however, accepted gifts of canned fruit, cigarettes and other items. The prison officials fear that the prisoners more financially able will be able to dominate the paralegals thereby creating an imbalance in legal services.

Some paralegals have received threats from prisoners. This, along with other factors, makes the job much less desirable. There are other prisoners more qualified or better suited to the job but they are not willing to take this type of work because they do not want to be involved in this situation.

The way the present pass system is set up any increase in paralegals would be of little, if any, aid to those in close custody.

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7. (Cont'd.)

Monday through Friday		
9 to 11 A.M.	1.30 to 3.00 P.M.	7.30-9.30 P.M.
Saturday, Sunday and Holidays		
9 to 11 A.M.	1.00 to 4.00 P.M.	7.00-9.00 P.M.

Not all the guards are fully informed about the Divisional Standards[8] regarding prisoner access to the courts. Some have never even read the Standards.

There are two catagories of legal assistants. A paralegal is one who has no formal training, only past experience and on the job training and a para professional is one with some college training and is felt by the prison officials to be capable of taking a case through all phases of litigation. The experience of most of the legal assistants[9] has included name changes, divorces, child custody, criminal and MCU and/or lockup hearings. Very few civil rights cases are handled by the paralegals because of the difficulty and amount of time involved in such cases.

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8. The Division of Correction and Parole has published an Administrative Plan Manual which is in essence a collection of the Divisional Standards regarding various aspects of prison life.

> The Standards are the requirements established by the Division Director, in accordance with Board of Control policy and Administrative Order 1:42, for determining the basic limits within which a group of activities may be carried out in order to achieve the goals of a Program.

Administrative Plan Manual, Introduction to Divisional Standards 3100 (May 1, 1970)

The Standards governing access to the courts are found at §210.210 - 212.278. The Standards explain the basic concepts of legal access as it relates to prisoners including the use of writ writers, close custody inmates, notary services, use of the law library, use of typewriters and copying services.

9. The New Jersey State Bar Association through the Correctional Reform Committee, Office of Inmate Legal Services, has recently published the New Jersey Prisoners' Manual, A Guide to Administrative and Court Practice and Procedure. The publication deals with such subjects as: Disciplinary Practices and Procedures, Parole Practices and Procedures, Detainers, Post-Judgment procedures, Filing an Appeal, Claims Against the Prison, Family Law (issues related to children and divorce procedures), Habeas Corpus procedures and a helpful guide to the use of the law library. The book is extremely well written and should be an excellent aid to those prisoners with questions in any of the above areas. The book contains such helpful items as: Checklists, formulas for computation of eligibility dates, form letters, motions and affidavits, claims forms, step-by-step guides, Court Rules, and statutes.

The legal assistance training program is a new one and as yet no prisoner has completed it. Currently there is no actual formal training.

A plan[10] is in the inception whereby prisoners would take college courses to receive legal training. The education would be limited to law so as to train as many prisoners as quickly as possible.

Like most other things, the rights of prisoners to access to the courts has two sides. On the one is the avowed and constitutionally mandated right of all persons to be allowed access to the courts.[11] On the other is the need to maintain a working and enforceable penal system. While the former has been evolving for some thirty-seven years,[12] its limits and demands have not been stated definitively and the two have stood as virtual equals, that is until the Supreme Court decision in Bounds, supra. Meanwhile the need for security within the prisons remains unaltered. To be sure a balance must still be struck between the two. Into the mix, however, must now be thrown the fact that the Supreme Court has emphatically stated the constitutional right of prisoners to access to the courts.

The decision in Bounds affirms the Court's earlier per curiam affirmation of the decision by the three judge court in Gilmore v. Lynch, 319 F.Supp. 105 (N.D.Cal. 1970) aff'd. sub nom Younger v. Gilmore, 404 U.S. 15 (1971).

What makes Bounds, supra, different from the other three major Supreme Court cases[13] dealing with the right of access

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10. See Appendix for a description of the minimum requirements for paralegals and a discussion of their training progr.

11. But See United States v. Kras, 409 U.S. 434 (1971), where the Supreme Court held that payment of a filing fee was a prerequisite to a discharge in bankruptcy, thus indicating that Bankruptcy Courts are not open to all, or at least not to the very poor.

12. See Note 1.

13. Ex Parte Hull, 312 U.S. 546 (1941); Johnson v. Avery, 393 U.S. 483 (1969); Gilmore v. Lynch, 319 F.Supp. 105 (N.D.Cal. 1970) aff'd. sub nom Younger v. Gilmore, 404 U.S. 15 (1971).

to the courts is that it expands the concept to cases beyond those dealing with writs of habeas corpus. The other cases stated, basically, that there was an affirmative duty to provide meaningful legal assistance in habeas cases, thus putting a financial burden on the states to provide law libraries or legal services, but this constitutional imperative did not extend to the full breadth stated in Bounds. The Supreme Court cases extending the right of access to assistance from jailhouse lawyers,[14] or alternatively to some other means and to §1983 Civil Rights cases,[15] was only an admonition not to interfere with assistance being rendered rather than an affirmative duty to act.

The dissents in Bounds indicate that if one were to[16]

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14. Johnson v. Avery, 393 U.S. 483 (1969).

15. Wolff v. MacDonnell, 418 U.S. 539 (1974).

16. "It is a novel and doubtful proposition, in my view, that the Federal Government can, by statute give individuals certain rights and then require the State, as a constitutional matter, to fund the means for exercise of those rights. Cf. National League of Cities v. Usery, 426 U.S. 833 (1976)." Bounds v. Smith, 430 U.S. 817, 835 (1977), (Burger, C.J. dissenting). (Emphasis his).

> The Court's reasoning today appears to be that we have long held that prisoners have a "right of access" to the courts in order to file petitions for habeas corpus, and that subsequent decisions have expanded this concept into what the Court today describes as a "meaningful right of access." So, we are told, the right of a convicted prisoner to "meaningful access" extends to requiring the State to furnish such prisoners law libraries to aid them in piecing together complaints to be filed in the courts. This analysis places questions of prisoner access on a "slippery slope", and I would reject it because I believe that the early cases upon which the Court relies have a totally different rationale than underlies the present holding.

Id. at 837 (Rehnquist dissenting) (Emphasis added).

extrapolate from earlier court decisions one would not reach the point reached in Bounds.[17]

The Bounds Court has interpreted "meaningful access" to require, at the least, adequate law libraries but, this "... does not foreclose alternative means to achieve that goal." Id. at 830.

In the context of the present factual situation the prisoners concede that the books present in the law library are adequate. My review of the law library and the books ordered confirms this.[18] The problem, however, is that the plaintiffs are not allowed access to the law library and therefore they allege that their constitutional rights in this regard are being infringed.

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17. [T]he right of access progressed from a right asserted by the Court essentially in protection of its own jurisdictional prerogatives to a constitutional imperative requiring the expenditure of state funds to implement it. In so describing this right of access, the Bounds Court left unanswered questions as to the appropriate scope. Worse, it described a right of access which not only cannot be easily contained but a right that seems logically to demand expansion beyond its present scope.

Potuto, Josephine, R., The Right of Prisoner Access: Does Bounds Have Bounds?; 53 Ind.L.J. 207, 216 (1977-78).

18. With the exception of certain treatises the TSP law library includes all the material mentioned in Bounds, supra at 819, n.4. The library also contains many books not included in the North Carolina system, including the following:

1. Regional Reporters (Atlantic Reporter 1st and 2nd)
2. Federal Digest
3. Regional Digest (Atlantic Digest)
4. Corpus Juris and Corpus Juris Secondum
5. Shepards Citations (N.J., Supreme Court, and Federal, but not all complete)

See American Correctional Association, Providing Legal Services for Prisoners: A Tool for Correctional Administrators, (3d ed. 1977); A.B.A. Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners, 8 Ga.L.R. 363 (1974).

It is currently the practice of the judges in this vicinage to donate all of our paperback reporters and any other law books to TSP as new ones come in. The cost of purchasing law books is great and if the prisons were to solicit similar material from other federal judges and from state judges a substantial library could be established at virtually no cost.

The defendants contend that the present system of allowing books to be brought into the lockup units plus the availability of paralegals to assist the prisoners complies with the constitutional requirements. For the reasons stated below I am of the opinion that the present plan of providing legal access to prisoners in close custody units does not pass constitutional muster.

The Court in Bounds offers at least two alternatives to States. They may provide "adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977). The Court's instruction is in the disjunctive not the conjunctive, thus either of the alternatives alone would suffice to meet the constitutional imperative.

Prisoners in close custody do not have actual access to the law library. Rather they receive the requested books and materials through a series of request slips and visits by inmate paralegals. This system is deficient for several reasons: (1) The limitation placed on the access to books, while realistic in light of the needs of other prisoners to use the library, leaves those in close custody without access; (2) the inability to bring in hard bound books creates a serious limitation on the cases which prisoners may review; (3) the process of copying the necessary cases when there is no duplicate softbound reporter or when the reporter is hardbound is ineffective at the very least because the copier is broken for extended periods of time.

The combination of these facts shows that those prisoners without actual access are deprived of the right to have the material necessary to prepare their cases.

"Preparation means having adequate time in which to work and having the materials available to do the legal work necessary to prepare [one's case]." Potuto, The Right of Prisoner Access: Does Bounds Have Bounds?, 53 Ind.L.J. 207, 231 (1977-78). (hereinafter Potuto).

> It would verge on incompetence for a lawyer to file an initial pleading without researching such issues as jurisdiction, venue, standing, exhaustion of remedies, proper parties plaintiff and defendant, and types of relief available. Most importantly, of course, a lawyer must know what the law is in order to determine whether a colorable

> claim exists, and if so, what facts are necessary to state a cause of action.
>
> If a lawyer must perform such preliminary research, it is no less vital for a pro se prisoner.

Bounds v. Smith, 430 U.S. 817, 825-6 (1977) (emphasis theirs).

In this circumstance the prisoners are neither allowed all the books necessary to prepare their cases nor are they allowed to keep what books they do get for long enough to digest the material.[19]

As to the use of inmates "trained in the law" to assist the prisoners this also fails for several reasons. Though less stridently proclaimed it is argued no less vociferously that the inmate paralegals' visits are to a certain extent de minimis. The visits are cut short because they have to leave the tier when movement of prisoners is taking place. The amount of material they may bring in is limited. The amount of time they can spend on any one case is limited by a heavy workload and the fact that a large portion of their work time is spent visiting prisoners. The tiers are not the most suitable places to conduct interviews. The occasional lagniappe of allowing repeat visits by the paralegals, while an advance over the past system, is only experimental and may be cut off at any time. Lastly, the qualifications and training of the paralegals leaves something to be desired. I have seen a great amount of their work and do not mean to disparage it, but in certain situations it does show a lack of understanding of some basic concepts of our system of jurisprudence.

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19. I must state that while the access that the prisoners have does not meet the constitutional requirement, I have received an enormously increased number of prisoner's complaints, a large majority of which are from those in lockup. The breakdown of cases from TSP in this vicinage is as follows:

	Judge Fisher	Judge Barlow	Totals
Civil Rights Cases -	41	23	64
Habeas Corpus -	5	5	10
			74

Parenthetically I note that all of those cases have extensive statements of the law. Further, any briefs in those cases are usually filled with authorities, albeit not all relevant. This further supports the fact that while they may get some cases they do not have the material for a period of time sufficient to comprehend its meaning.

There is also a serious question in my mind about the effect of relying solely on the assistance of those trained in the law to provide adequate legal access. While the Supreme Court's decision leaves no question that this will suffice, I believe that it may be seriously abrogating the right of a prisoner to represent himself properly.[20]

As one author develops the thought

> The test for what makes an effective counsel clearly suggests one necessary factor in the pro se right - the right, and need, to prepare. Preparation is so crucial for an attorney that the question whether there was adequate preparation is the crux of most allegations of ineffective assistance of counsel. Thus, if the right to proceed pro se means anything, it must encompass the due process right, even for an incarcerated pro se defendant, to prepare. As has been said,
>
> > an adequate opportunity to prepare is a fundamental component of due process, guaranteed by the Fifth and Fourteenth Amendments. Put another way, the state cannot prevent a jailed pro se defendant from preparing his defense merely because he has chosen to exercise his constitutional right of self-representation.
>
> Preparation means having adequate time in which to work and having materials available to do the legal research necessary to prepare the defense. If the result were otherwise, the incarcerated pro se defendant would be foreclosed from even attempting to prepare an adequate defense or to learn enough trial procedure so that he can "play with the same ground rules that anybody plays."

Potuto, supra at 230-31.

To remedy these deficiencies the plaintiffs have suggested various alternatives. Plaintiffs suggest that they be released from the close custody units to the general population four times a week for three hours at a time during the pendancy of any of their law suits so as to be allowed access to the law library; provide direct access to the law library four times per week, five hours at a time, for each lockup unit; provide, establish, and maintain an adequate law library in each lockup unit; provide a legal services program, in addition to the inmate

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20. See Faretta v. California, 422 U.S. 806, 836 (1975). That case held that there is a constitutional right based on the Sixth Amendment as it applies to the States through the Fourteenth, for a state criminal defendant to proceed pro se.

paralegals, which would provide legal counsel upon request to prisoners in lockup units.

While any of these suggestions, if adopted by the prison officials, would most likely alleviate a majority of the problems currently being faced by the prisoners, there are some very obvious difficulties with each. The inmates here concerned seem to think that the standards for access to the courts set up by the Supreme Court would allow them complete access to the law library at any time during regular hours for whatever length of time they think they require. This idea is invalid because it fails to take into consideration the physical condition of the prison itself, the great number of other inmates who are entitled to use the library,[21] and the fact that the plaintiffs themselves are in close custody because they are security risks. They are hardened criminals who are serving long prison terms and who are fully capable of violence at any time.

The plaintiffs have requested that this Court issue a preliminary injunction allowing access to the law library used by the general prison population, to allow those prisoners in close custody to assemble outside their cells to "discuss legal strategy and tactics", and various other similar demands. Plaintiffs also request the establishment of small law libraries in the lockup units.

While it is true that the denial of the right to legal access, in any manner, presents a substantial and immediate harm of an irreparable nature, see Henry v. Greenville Airport Comm., 284 F.2d 631, 633 (3d Cir. 1960), I do not believe that the prison officials are attempting to undercut the prisoners' rights. Though their current method of providing access does not completely comply with the constitutional mandate, their actions have not been putative, nor have their actions resulted in substantial untoward results. This is clearly a case where the officials have made and are making every possible effort to comply with the law.

21. Under the plan now in use only six inmates are allowed to use the law library at any given time. In my experience, the inmates in close custody seem to be much more proportionately active in the courts than those in the general population. Thus, allowing close custody inmates access to the law library would have a pernicious effect on access by the general population.

The issuance of an injunction at this stage would be of little value. There is currently a plan being established which, from the testimony I heard, would substantially alleviate the problems which form the crux of this litigation.

Courts are generally less competent than prison administration to restructure prison practices and thus should, whenever possible, refrain from such activity. Any regulation of the prison by the Court would only tend to emasculate the administration's authority. Where, as here, it can be shown that the officials have failed to comply, while acting in good faith, with the mandate and direction of the courts, intervention is not necessarily warranted. Under these circumstances, I believe that some deference must be shown to the choice of the State as to how best to achieve access to the courts for the prisoners. I am, therefore, denying the motions for a preliminary injunction, in order to allow the administration to bring their desires to fruition, i.e. implement the plan outlined at the hearings.

Because I believe the requirement to allow legal access to the courts is pregnant with possibilities, and in order to provide some guidelines, I direct the administration's attention to the following suggestions:

1. Initiate a training program for the guards, whereby they are informed of the rights of the prisoners to legal access.

2. Continue the practice of allowing a return visit for the paralegals.

3. Provide prisoners with a means of recording when they make requests.

4. Establish an area where paralegals may meet with prisoners from close custody without interruption.

5. Make it possible for those inmates in close custody who do not wish the aid of inmate paralegals to have more ready, though not direct, access to the library.

These are only suggestions. They are the result of my having heard the various complaints of the prisoners during the hearing. I am aware that the implementation of some or all of

these may be expensive and difficult (because of security) thus I reiterate that they are not to be construed as mandatory. For further instruction see A.B.A. Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners, 8 Ga.L.R. 363, (1974).[22]

Defendants are to submit the final plan to the Court for review within four months. Defendants will submit an order within ten days of the date of this memorandum.

Dated: September 12, 1978

22. See also Bounds v. Smith, 430 U.S. 817, 830-32 (1977). Note that one of the alternatives suggested by the Court is "the training of inmates as paralegal assistants to work under lawyers' supervision." Id. at 831 (emphasis added). The suggestion is that while inmate paralegals may provide a viable alternative to actual access to the law library, it must be under the supervision of an attorney.

APPENDIX

The following is a portion of the Plan to Give Legal Assistance to Inmates.

CLOSE CUSTODY AREAS, HOSPITAL - PROCEDURES FOR PROVISION OF LEGAL ASSISTANCE

Every inmate in a close custody area, including MCU, Administrative Segregation and Disciplinary Segregation, or the Prison Hospital shall have adequate access to the law library and to legal assistance consistent with the security needs of the institution. The procedure for doing so is as follows.

An inmate requesting assistance is required to fully complete a three-part form number LA 1/1/78. These forms shall be given to the inmate upon request by the wing officer. The inmate must give the completed form to the wing officer. The wing officer must sign the form and submit it to the area sergeant who must also sign the form. The area sergeant must then take the form to Traffic Control. Each copy of the form is to be date stamped upon receipt by Traffic Control.

An inmate paralegal from each of the three inmate legal groups is to report daily to Traffic Control to receive requests. Should the designated inmate paralegal be unavailable, another inmate paralegal designated by the Director of Education may report to Traffic Control.

Working hours for those paralegals who are assigned to the law library are as follows:

Monday through Friday

Winter - 8-11 A.M.	1-4 P.M.	5.45-9.30 P.M.
Summer - 8-11 A.M.	1-3 P.M.	3.45-5.30 & 6.15-9.30 P.M.

Saturdays & Sundays

Winter - 8-11 A.M.	1-4.30 P.M.	6.15-9.30 P.M.
Summer - 8-11 A.M.	1-4.30 P.M.	6.15-9.30 P.M.

Inmate paralegals assigned to ILA and ACLU whose work location is the balcony, shall observe the following work hours:

Monday through Friday

8-11 A.M. 1-3 P.M.

Each inmate paralegal shall sign a receipt for each request form that he picks up from Traffic Control. The

receipt shall specify the time and date that the paralegal picks up the request. This receipt is to be kept by Traffic Control. The inmate paralegal shall be given the white and yellow copies of the request form. Traffic Control shall keep the pink copy of the request form.

The paralegals shall be responsible for scheduling their visits. However, every inmate who requests assistance must be visited by a paralegal within 7 days of the request. Inmates who are in pre-hearing detention must be seen within 24 hours of their request.

One coded badge is available for each closed custody area and for the hospital. Each inmate paralegal must report to Traffic Control prior to entering the housing units and surrender his inmate I.D. card in order to receive the properly coded badge. The badge must be worn on the shirt, in plain sight. Failure to comply will result in a Disciplinary Report and/or a referral to the Classification Committee for program review. In order to provide timely assistance, the visit shall be permitted. Any inmate paralegal in an area not properly authorized shall receive a Disciplinary Report and/or referral to the Classification Committee for program review. In order to provide timely assistance the visit shall be permitted. If an inmate paralegal receives a serious disciplinary charge which necessitates his placement in pre-hearing detention, the Center Keeper shall notify Traffic Control which shall call another paralegal to make those visits which have been requested. Center Keepers are to advise the Director of Education within 24 hours of a paralegal's placement in any pre-hearing detention status.

When the inmate paralegals report to the wing officers in the respective housing areas, they must present the white and yellow copies of the form to the officers for verification. The inmate paralegal may bring with him a reasonable amount of legal supplies (for example, pens, pencils, carbon paper, paper and envelopes), legal materials (including photocopied cases, court papers and transcripts) and notes, as shall be necessary to assist the inmate. Where (1) it is unfeasible to photocopy material needed

by the inmate, and (2) paperback supplements or extra copies are not available, hardcover volumes may be taken into close custody units or the hospital for short periods of time. All the material which the paralegal carries into the areas with him shall be subject to search for contraband. No such legal material shall be read nor shall it be seized except in a case where contraband is found. The inmate paralegal may leave legal supplies and materials with the inmate who has requested assistance where this is necessary to complete research or prepare documents for filing.

Inmates who are receiving services from the paralegals must sign the white copy of the form to verify that they have been visited by the inmate paralegal.

At the conclusion of the visit, the inmate paralegal is to report to Traffic Control with the white and yellow copies of the form. Traffic Control will retain the white copy. The inmate paralegal will retain the yellow copy.

If a return visit will be necessary the inmate paralegal must obtain a green Return Visit Ticket from Traffic Control when he submits the white copy of the request form. Traffic Control will write on the ticket the name, number and location of the inmate to receive the return visit and the date of issuance. The ticket will be valid for 7 days from the date of issuance. The paralegal may use this ticket at any time within these 7 days by notifying Traffic Control and obtaining the proper badge and clearance.

When the paralegal returns, he must have the ticket with him. He must show the ticket to the wing officer for verification and the inmate receiving the return visit must sign the ticket to verify that they have been visited. The paralegal must turn in the ticket to Traffic Control at the completion of the visit. Traffic Control will keep these tickets.

Only one return visit will be permitted. If an inmate requires additional assistance, he must submit a new request form number LA 1/1/78.*

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* The return visit ticket concept is experimental at this time. It is subject to modification and retraction should custodial considerations warrant.

All paralegals shall at all times be subject to all prison regulations concerning searches including strip searches and regulations concerning security.

If an inmate requests legal assistance which is not provided in accordance with these procedures, he shall submit a written complaint directly to the Director of Education. The Director shall be responsible for forwarding the complaint to the Unit Captain for investigation. The Unit Captain shall be responsible for taking all appropriate action to ensure compliance with these procedures.

NOTARY SERVICES

Notary services are available to all inmates in close security areas and the hospital. An inmate needing such service shall contact the wing social worker.

COPYING SERVICES

Copying services are available in the law library. Only items related to legal actions or research may be copies through the law library. Requests for copying should be submitted to the paralegals. Items which are requested to be copied may be reviewed by the Director of Education but only to ensure that they are legal in nature. Whenever possible, items which can be reproduced by typing will be done so.

INMATE ORIENTATION

Each inmate will receive a written copy of the procedure for obtaining access to the law library and to legal assistance. This procedure together with all amendments shall be made a part of the Inmate Handbook at its next revision. In the interim, all amendments to the procedure as distributed will be posted and a copy will be given to each inmate.

OFFICER ORIENTATION

Each officer at the prison will be given a written copy of the procedures governing inmate access to the law library and to legal assistance. Each officer shall receive a copy of the procedures. Each officer regularly assigned to the school area, Traffic Control and the housing units shall be required to attend a training session to clarify their duties and responsibilities

with respect to these procedures and to ensure that the procedures are uniformly and consistently enforced.

INMATE PARALEGALS

There are presently three institutionally recognized inmate paralegals who receive pay at a designated rate presently accorded to inmate paraprofessionals. Experience has shown that this number is insufficient to meet the needs of the inmate population at Trenton. In order to improve the quality of legal services, the number of trained inmate paralegals shall be increased to a minimum of 6, supplemented by a number of inmate law clerks and research assistants who are in training to become paralegals.* Of the six, four shall be assigned to the law library and one each to the Inmate Legal Association and American Civil Liberties Union (ILA and ACLU).

Criteria for inmate paralegals are as follows. They reflect both educational and custodial considerations. Each inmate paralegal must have a high school diploma or its equivalent; or, in the alternative, must demonstrate the ability to read and absorb legal material and to conceptualize the principles therein. Each inmate paralegal must demonstrate the ability to type with facility. Each inmate paralegal must demonstrate a sufficient mastery of the rules of English grammar and vocabulary to be able to express legal concepts and factual circumstances clearly and concisely.

The Director of Education shall interview and evaluate each candidate for a paralegal position. He shall submit his written assessment and recommendation to the Classification Committee.

Any inmate who meets the educational criteria to be a paralegal must also receive the approval of the Classification Committee. The Classification Committee shall consider the inmate's entire institutional record including his disciplinary record, prior work record, psychological reports, report of the Director of Education, and any other relevant factors.

* The number and structure of the paralegal program are subject to modification depending upon the needs of the institution and the training course ultimately designed.

Paralegals assigned to ILA and ACLU will also be granted the necessary Traffic Control badge to permit access to the law library.

No inmate paralegal is to accept any form of remuneration or gift from any inmate for the rendering of legal assistance. Acceptance of remuneration or gift in any form will result in disciplinary action and/or referral to Classification for reconsideration of program assignment. Inmate paralegals shall receive that rate of institutional pay as is approved by the Superintendent.

CENTRAL OFFICE LEGAL SERVICES COORDINATOR

There shall be a Central Office Coordinator of Inmate Legal Services. This person shall have responsibility for generally overseeing the provision of meaningful access to the courts and the provision of legal services to inmates at all institutions. He shall periodically, but not less than once yearly, visit each institution and review the procedures whereby inmates receive access to the institutional law libraries and legal services. He shall ensure that the procedures are reasonably designed to provide each inmate, regardless of housing assignment, adequate access to the institutional law library and to the services of the inmate paralegals. The Legal Services Coordinator shall also inventory each institutional law library annually to ensure that all volumes are current, to ascertain what replacement volumes, if any, are necessary and what additional volumes should be purchased in order to provide adequate up-to-date law libraries. It shall be the responsibility of the Coordinator to submit a budget request annually which is sufficient to meet the needs of each institutional law library. This request is to be part of the Central Office budget request. Individual invoices may also be submitted during the year to encompass anticipated needs.

The Central Office Coordinator shall be responsible for training inmate paralegals. All inmate paralegals will be required to successfully complete a training program which is

presently being designed. This course will include: training in basic legal research including locator skills and shepardizing; how to complete legal forms; basic familiarity with how to proceed with habeas corpus petitions, motions for new trials, direct appeals, civil rights actions, motions for post conviction relief and other actions pertaining to inmates' welfare. The course will also include descriptions of the State and Federal court systems. The course should also include a period of in-service training to familiarize paralegal candidates with their duties.

Each inmate who successfully completes the training program will be required to undergo periodic retraining at no less than two-year intervals.*

GENERAL PROVISIONS

Each inmate shall be permitted to retain his personal legal material in his cell which shall be subject to search only for contraband.

Nothing contained herein shall be deemed to preclude any inmate from obtaining legal assistance from any other inmate, except that only inmates designated as paralegals will be granted entrance to close custody areas. Nothing contained herein shall be deemed to preclude any inmate from obtaining legal assistance from any outside attorney.

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* Subject to finalization of the actual training course.

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
HUMAN SERVICES & CORRECTIONS SECTION
STATE HOUSE ANNEX
TRENTON 08625

JOHN J. DEGNAN
ATTORNEY GENERAL

STEPHEN SKILLMAN
ASSISTANT ATTORNEY GENERAL
DIRECTOR

JOSEPH T. MALONEY
DEPUTY ATTORNEY GENERAL
SECTION CHIEF

RECEIVED 9-29-78

September 27, 1978

Hon. Clarkson S. Fisher
U.S. P.O. & Courthouse Bldg.
Trenton, NJ 08605

Re: Newman v. Mulcahy, Civil Action No. 77-59
Johnson v. Hilton, Civil Action No. 77-1478

Dear Judge Fisher:

In accordance with your Letter Opinion of September 12, 1978, I met with the Deputy Commissioner of the Department of Corrections, the Trenton State Prison Superintendent, and other prison officials to discuss implementation of the Department's plans to improve access to the courts for prisoners in close custody areas. The following steps are presently being taken:

1. An in-service training program is in the process of implementation for prison officers, to fully acquaint them with their responsibilities in the area of legal access. This will include preparation of a pamphlet for distribution to all personnel involved with this process. As soon as the pamphlet is ready, a Captain or other high-level prison officer will conduct the training sessions, which will take place periodically so that new personnel will also receive instructions. This program is expected to be in operation within the next three to four weeks.

2. A new edition of the prison inmate's handbook is soon to be published and distributed, which will incorporate procedures for legal access.

3. New tickets are in the process of preparation which will be made available to para-legals to implement the practice of allowing a return visit to inmates in close custody areas who have requested legal assistance. The tickets are expected to be ready for use in one week.

With the edition of a new xerox machine, the administration is exploring the feasibility of establishing a "library" of xeroxed cases and statutes in sufficient numbers that inmates who desire to use them may retain them for longer periods of time than they would hardcover volumes. The Director of Education will obtain from the para-legals the names and citations which are most sought after by the inmates so that these can be xeroxed first. It is hoped that this system will be developed so as to implement the suggestions made in paragraph five on page 16 of your Letter Opinion.

Mr. Roselli, who is responsible for setting up the training program for para-legals, reports that he expects a curriculum to be fully developed by November, and the first training session to be conducted early in January. This will involve approximately twenty inmates selected by the Director of Education.

I will be receiving written reports from the various individuals as implementation of the plan progresses.

If you have any questions regarding these matters please do not hesitate to call me.

Respectfully yours,

JOHN J. DEGNAN
Attorney General of New Jersey

By: Elaine W. Ballai
Elaine W. Ballai
Deputy Attorney General

EWB:lap
cc: Emory Johnson-CERT. R.R.R.
James Newman-CERT. R.R.R.

p. 9

Civil Action No. 77-59

STATE OF NEW JERSEY)
ss:
COUNTY OF MERCER)

A F F I D A V I T

EMORY X. JOHNSON, being duly sworn, according to law, upon his oath, deposes and says:

1. I am a prisoner at the Trenton State Prison, presently confined in the administrative segregation unit of that prison and the plaintiff in the above entitled action.

2. I filed a motion for a preliminary injunction against the defendants in the above titled action because I was deprived of access to the prisoner's law library and prevented from receiving the necessary law books to conduct the need legal research personally.

3. After a Court hearing which commenced July 24, 1978 and concluded August 1, 1978, Judge Clarkson S. Fisher, agreed that my constitutional rights under the First Amendment, U.S.C., were being violated, but declined from issuing a preliminary injunction mandating that the defendants be enjoined from continuing the deprivation and injury of a irreparable nature.

4. I have made over ten (10) formal requests, made out in the required manner, to either have a so-called paralegal clerk conduct research in urgent matters presently under appeal or before the Superior Court for trial, or in the alturnative to have the clerks bring the necessary Shepard Citation volumes to the segregation unit so that I could conduct the research myself. Those requests were made on the following dates: 8/24/78; 9/12/78; 9/15/78; 9/18/78; 9/19/78; 9/20/78; 9/24/78; 9/30/78; 10/9/78; 10/11/78; and 10/16/78.

5. To the date of the making of this affidavit, I still have not received the required shepard citation books, nor has any paralegal clerk been assigned to conduct research in my behalf while I am unable to do so, despite my request for such legal assistance to the Supervisor of Education, Athony Turner.

6. I have spoken to the Clerk of the prison law library who has informed me that he has neither the time nor staff to aid me in such research as shepardising cases for me and the same has been brought to the attention of the prison officials and defendants in the above entitled action by myself in an effect to allow them to remedy this problem.

7. I have been waiting approximately sixty (60) days to obtain urgently needed information to properly file briefs in criminal matters presently before the state and United States Courts.

8. I was also compelled to request an extention of thirty (30) days in the Mercer County Superior Court, in which to answer a brief submitted by the Prosecutor without access to the prison's library, therefore since I was unable to shepardise the cases related to this matter I was restricted to cases which may have through more recent opinions been overruled, making any defense I could present, far from effective against the resources of the State Prosecutor in a criminal offense which in itself is an irreparable injury.

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 20TH DAY OF OCTOBER, 1978.

Cheryl J. Cermele
CHERYL J. CERMELE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 27, 1982

EMORY X. JOHNSON, AFFIANT

p. 10

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON, N. J. 08605

RECEIVED
10-20-78

CHAMBERS OF
CLARKSON S. FISHER
JUDGE

LETTER OPINION

October 18, 1978

Emory X. Johnson,
#52180,
Drawer N,
Trenton, N.J. 08625

Elaine Ballai, Esq.,
Deputy Attorney General,
State House Annex,
Trenton, N.J. 08625

FILED
OCT 18 1978
At 9:50 11:30 A.M.
ANGELO W. LOCASCIO
Clerk

Re: Johnson v. Hilton et al.,
Civil No. 77-59

Dear Mr. Johnson and Ms. Ballai:

Plaintiff moves this court to reconsider its judgment of September 11, 1978 which denied plaintiff injunctive relief. Alternatively, plaintiff moves for leave to take an appeal in forma pauperis and for the appointment of counsel.

As evidenced by a lengthy memorandum decision, this court gave the hearing on this matter its careful attention. The prison authorities must be allowed the four month period to develop and present the plan for inmate legal services. Although plaintiff may be currently experiencing difficulty in research and preparation of his cases, the court's prior decision was rendered with that fact in mind, and plaintiff will have to wait until the plan is submitted and reviewed. Accordingly, plaintiff's motion to reconsider the judgment is denied.

28 U.S.C.A. §1292(a) gives plaintiff the right to appeal from this court's denial of his motion for a preliminary injunction. Plaintiff does not need leave of the court to perfect this appeal and plaintiff's motion is denied.

With respect to plaintiff's request for appointment of counsel, the court is aware of the profusion of litigation in which Mr. Johnson is currently involved. The motion for appointment of counsel in a civil damage action brought in forma pauperis, is discretionary and should be granted only in exceptional circumstances. Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975); Wimberly v. Rogers, 557 F.2d 671, 673 (9th Cir. 1977); Alexander v. Ramsey, 539 F.2d 779, 780 (9th Cir. 1976). Plaintiff has instituted and conducted a

number of actions with reasonable efficiency, and the court finds this case does not present the "exceptional circumstance" which would justify appoint of counsel for plaintiff.

Defendants will submit an order in conformance with this opinion.

Very truly yours,

CSF/efr

Clarkson S. Fisher,
U.S.D.J.

Fr. 11(b)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON, N. J. 08605

CHAMBERS OF
CLARKSON S. FISHER
JUDGE

August 1, 1978

Mr. Emory X. Johnson
#52180
Drawer N
Trenton, New Jersey 08625

Elaine Ballai, Esq.
Deputy Attorney General
State House Annex
Trenton, New Jersey 08625

ORIGINAL FILED
AUG 3 1978
ANGELO W. LOCASCIO, CLERK

Re: Johnson v. Hilton
Civil No. 77-59

Gentlemen:

This matter comes before the Court on the motion of plaintiff for appointment of counsel. This matter is being resolved without oral argument pursuant to F.R.Civ.P. 78.

By his complaint the plaintiff alleges that he is being denied access to the prison law library. This matter has been consolidated, for the purpose of a hearing only, with Newman v. Mulchay, Civil No. 77-1478.

Thus far, the plaintiff has successfully withstood a motion for summary judgment and made various motions on his own behalf. It is the opinion of this Court that, thus far, the plaintiff has been able to adequately prosecute his claim.

Motions for appointment of counsel pursuant to 28 USC §1915 in proceedings in forma pauperis are addressed to the Court's sound discretion and are granted only in exceptional

circumstances. Wimberly v. Rogers, 557 F.2d 671, 673 (9th Cir. 1977); Alexander v. Ramsey, 539 F.2d 25 (9th Cir. 1976); Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975); Peterson v. Nadler, 452 F.2d 754 (8th Cir. 1971).

Attorney's fees may be awarded to the successful plaintiff at the conclusion of the case, but only where (1) they are authorized by statute or enforceable contract; (2) a common benefit is conferred by the recovery of a fund or property; (3) a party has willfully disobeyed a court order; or (4) the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, Aleyska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975). See Skehan v. Board of Trustees of Bloomsburg State College, 538 F.2d 53 (3d Cir. 1976), cert. denied, 429 U.S. 979; Carter v. Noble, 526 F.2d 677 (5th Cir. 1976); See also The Civil Rights Attorney's Fees Act of 1976, Pub. L. No. 95-559, 90 Stat. 2641, amending 42 USC §1988 to provide for attorney's fees in certain cases.

Thus, considering the fact that this is not an extraordinary case, the plaintiff has been able to adequately represent himself, I do not feel that this case represents the extreme circumstance in which this Court should exercise its discretion to appoint counsel. Plaintiff's motion, therefore, is denied.

The defendants will submit an order within ten (10) days.

Clarkson S. Fisher, U.S.D.J.

Dated: August 1, 1978

RECEIVED
11-3-78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ENOCH JOHNSON,

Plaintiff,

v.

GEO. F. KELLY, et al.,

Defendants.

Civil Action No. 78-[illegible]

ORDER

This matter having come before the Court on plaintiff's Motion for a Reconsideration of Judgment, for Leave to Appeal In Forma Pauperis and for Appointment of Counsel, plaintiff Enoch Johnson appearing pro se and defendants being represented by Elaine W. Ballai, Esq., Deputy Attorney General, and the Court having considered the written submissions of the respective parties,

IT IS on this 30th day of Oct., 1978,

ORDERED that plaintiff's Motions for Reconsideration of Judgment, for Leave to Appeal, and for Appointment of Counsel are denied.

CLARKSON S. FISHER, U.S.D.J.

ORIGINAL FILED
OCT 30 1978

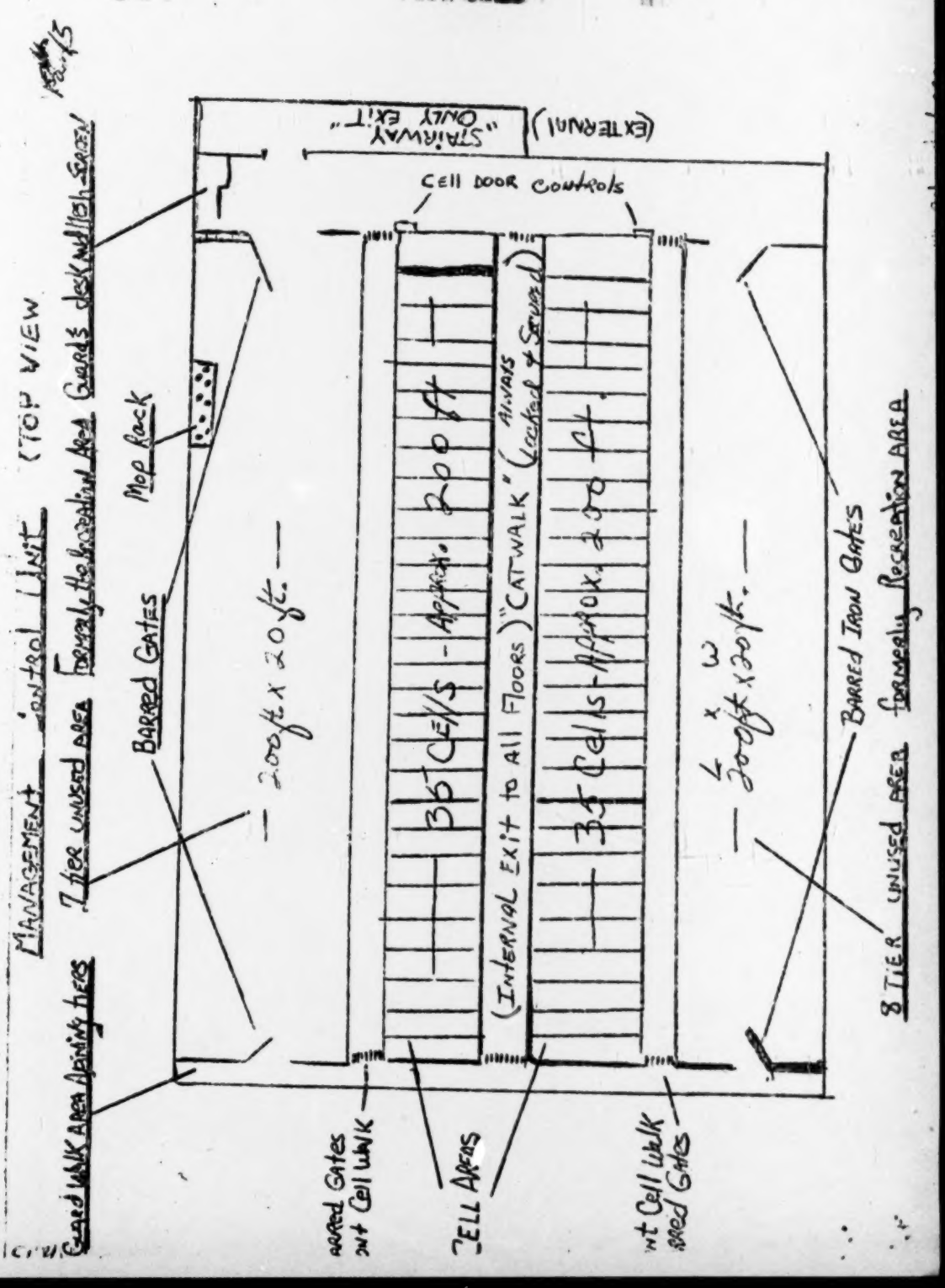

Exhibit No. 25(f)

New Jersey State Library
185 West State Street
Trenton, New Jersey 08625

SERVICES PROVIDED TO INMATE LIBRARIES IN NEW JERSEY STATE INSTITUTIONS

Inmate libraries in the various state institutions will be served through the Governmental Reference Office. (Telephone 292-6220, SCAN 322-6220). Reference service will include referrals to appropriate units within the State Library such as Law, Archives and New Jersey Reference.

Requests from these institutions should be sent through the designated institutional librarian. While rush telephone requests will be honored, this privilege should not be abused. Requests for four or more items must be in written form. Where practical, written requests should be submitted on official ALA interlibrary loan and photoduplication forms. Written requests will be processed promptly with other interlibrary loan requests received by the State Library. If requested, the State Library will supply a small quantity of these forms to the designated institutional librarians. Requests for forms should be made through the Governmental Reference Office.

Single copies of periodical articles up to 20 pages per article will be supplied free. Requests in excess of 20 pages will be charged for at the rate of 10¢ per exposure. Because of staff limitations, the Library may not be able to provide copies of articles in excess of 50 exposures. Photocopies in excess of 50 pages can be made by the institution's librarian or the librarian's designee and will cost 10¢ a page after the first 20 pages. If there is a charge for material, the requesting librarian will be asked for authorization to proceed before the photocopies are ordered. Where copies are obtained from another library, the photocopy and bill be sent directly to the requesting library.

As any State employee, employees of the institution may request work related information or materials directly from the Governmental Reference unit, or they may channel their requests through the institution's library. Employees calling directly should identify themselves as State employees since we provide only very limited direct reference service to non-state employees.

Any questions concerning these services should be directed to Stephen Breedlove, the supervisor of the Governmental Reference Office.

(Pg.12d)

SB/pc
12/79

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DIAGRAM - AD. SEC. T.V. CAGE:

TOP VIEW

OPEN TOP - ARE PROTECTED BY CAGE AT 6'0" HIGH

REAR T.V. SCREEN

40' Approx.

15'

BENCH

TABLES

#2 ENTRANCE & EXIT

#1 ENTRANCE & EXIT

ENTRANCE & EXIT
For personnel & maintenance workers only

NOTES:

LENGTH VARIES BETWEEN: (40 x 15 x 20ft.) Of Case Area.

AREA ENCLOSED WITH MESH AND IRON BARS

BARS AND MESH ARE T.V. SCREEN ARE IRON

OPENING FOR ENTRANCES & EXITS ARE (2 x 7')

WALLS ARE 8" BRICK AND IS PAINT AND STANDARD PROCEDURE